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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 \* \* \*

6 MICHAEL RODRIGUEZ,  
7 Plaintiff,  
8 v.  
9 NAPHCARE, et al.,  
10 Defendants.

Case No. 2:17-cv-02344-RFB-CWH

**ORDER**

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12 Presently before the court is plaintiff Michael Rodriguez's Motion Requesting Court  
13 Order Directing the Las Vegas Metropolitan Police Department and Naphcare to Facilitate the  
14 U.S. Marshal's Service of Process (ECF No. 70), filed on September 20, 2018. Defendants did  
15 not file a response.

16 Also before the court are Rodriguez's proposed scheduling order (ECF No. 72) and  
17 Williamson and Mondora's proposed scheduling order (ECF No. 73), filed on September 27 and  
18 September 28, 2018, respectively.

19 Also before the court is defendants Larry Williamson, M.D. and Raymond Mondora,  
20 M.D.'s Motion for Screening of Plaintiff's Proposed Second Amended Complaint Pursuant to 28  
21 U.S.C. § 1915A(a) and the Prison Litigation Reform Act 42 U.S.C. § 1997e (ECF No. 74), filed  
22 on September 27, 2018. Rodriguez filed a response (ECF No. 77) on October 11, 2018.  
23 Williamson and Mondora filed a reply (ECF No. 78) on October 18, 2018.

24 **I. BACKGROUND**

25 The parties are familiar with the facts of this case and the court will not repeat them here  
26 except where necessary. Rodriguez is a pretrial detainee at the Clark County Detention Center.  
27 In his original complaint, which the court screened under 28 U.S.C. § 1915A and § 1915(e)(2),  
28 Rodriguez sued defendants Naphcare, Dr. Mondora, Dr. Williamson, Undersheriff Fasulo, and

1 Deputy Chief Suey, alleging they violated his Eighth Amendment rights by abruptly stopping his  
2 pain-management treatment. (Screening Order (ECF No. 11); Compl. (ECF No. 12).) Rodriguez  
3 was given permission to file a second amended complaint. (Order (ECF No. 69).) The second  
4 amended complaint adds new claims and new parties. (Second Am. Compl. (ECF No. 46).)  
5 Rodriguez now requests assistance from Las Vegas Metropolitan Police Department and  
6 Naphcare with service of the second amended complaint. Drs. Mondora and Williamson request  
7 that the court screen the second amended complaint.

## 8 **II. MOTION FOR SCREENING (ECF NO. 74)**

9 Drs. Mondora and Williamson request that the court screen the second amended complaint  
10 under 28 U.S.C. § 1915A(a) and 42 U.S.C. § 1997(e), arguing it includes new parties, new  
11 claims, and new dates of injury. They argue the parties should not be required to spend time and  
12 money on discovery if the new claims are without merit. Rodriguez does not oppose screening of  
13 his second amended complaint, but he argues defendants should not be given an opportunity to  
14 renew arguments they have already litigated in this case.

### 15 **A. 28 U.S.C. § 1915A**

16 Section 1915A(a) states as follows with respect to screening:

17 (a) Screening. — The court shall review, before docketing, if feasible or, in  
18 any event, as soon as practicable after docketing, a complaint in a civil  
19 action in which a prisoner seeks redress from a governmental entity or  
officer or employee of a governmental entity.

20 28 U.S.C. § 1915A(a). While the statute is clear regarding the timing of compulsory screening—  
21 that it must take place as soon as practicable after docketing—it “does not require a court, either  
22 explicitly or implicitly, to screen every time a plaintiff seeks to amend the complaint.” *Olausen v.*  
23 *Murguia*, No. 3:13-CV-00388-MMD, 2014 WL 6065622, at \*3 (D. Nev. Nov. 12, 2014). After a  
24 complaint has been screened under § 1915A, proposed amended complaints are governed by Rule  
25 15 of the Federal Rules of Civil Procedure. *See id.* at \*4. Post-answer re-screening of every  
26 amended complaint, regardless of how far a case has progressed, would increase the burden on  
27 the federal courts, which is contrary to the Prison Litigation Reform Act’s purpose of reducing  
28 the burden of prisoner litigation on the court. *See id.*

1 Here, the court entered a screening order as required by § 1915A. Drs. Mondora and  
2 Williamson subsequently answered the complaint. When Rodriguez moved to file a second  
3 amended complaint, Drs. Mondora and Williamson had an opportunity to oppose that motion  
4 before it was granted by the United States district judge assigned to this case. To the extent Drs.  
5 Mondora and Williamson argue the new claims are without merit and should not proceed, they  
6 raised those arguments in their opposition to Rodriguez’s motion for leave to file a second  
7 amended complaint, and they did not file a motion for reconsideration of the United States district  
8 judge’s order permitting amendment. Given that § 1915A does not require the court to screen  
9 Rodriguez’s second amended complaint, and that it would not be in the interest of judicial  
10 efficiency, the court declines to do so.

11 **B. 42 U.S.C. § 1997e**

12 Drs. Mondora and Williamson also argue the court should screen the second amended  
13 complaint under 42 U.S.C. § 1997e, which provides:

14 The court shall on its own motion or on the motion of a party dismiss any action  
15 brought with respect to prison conditions under section 1983 of this title, or any  
16 other Federal law, by a prisoner confined in any jail, prison, or other correctional  
17 facility if the court is satisfied that the action is frivolous, malicious, fails to state a  
claim upon which relief can be granted, or seeks monetary relief from a defendant  
who is immune from such relief.

18 42 U.S.C. § 1997e(1). The statute “gives a court the authority to dismiss an action sua sponte; it  
19 does not mandate that a court re-screen in response to a motion to amend filed post-answer and  
20 mid-litigation.” *Olausen*, 2014 WL 6065622 at \*5. However, § 1997e(1) does not address—let  
21 alone compel—post-answer screening.” *Id.* Given that § 1997e(1) does not require post-answer  
22 re-screening of amended pleadings, the court declines to screen Rodriguez’s second amended  
23 complaint based on this statute. The court therefore will deny Drs. Mondora and Williamson’s  
24 motion for screening.

25 **III. MOTION REQUESTING SERVICE (ECF NO. 70)**

26 Rodriguez’s “Motion Requesting Court Order Directing the Las Vegas Metropolitan  
27 Police Department and Naphcare to Facilitate the U.S. Marshal’s Service of Process” is somewhat  
28 unclear. To the extent Rodriguez requests that Naphcare and Metro be required to assist him with

1 service, that motion is denied, as it is not defendants' burden to effectuate service. To the extent  
2 Rodriguez requests assistance with service of his second amended complaint by the United States  
3 Marshal's Service, that request is granted. *See* Fed. R. Civ. P. 4(c)(3) (providing that the court  
4 must order service by a United States marshal if the plaintiff is authorized to proceed *in forma*  
5 *pauperis* under 28 U.S.C. § 1915). The court therefore grants Rodriguez's motion in part and  
6 denies his motion in part. The court includes instructions regarding service in the conclusion of  
7 this order.

#### 8 **IV. SCHEDULING ORDER**

9 The court has reviewed and considered the parties' proposed discovery plans and  
10 scheduling orders. The parties agree this case should proceed on the standard 180-day discovery  
11 plan. The court therefore will enter a separate scheduling order with a 180-day discovery plan,  
12 measured from the date of this order.

#### 13 **V. CONCLUSION**

14 IT IS ORDERED that defendants Larry Williamson, M.D. and Raymond Mondora,  
15 M.D.'s Motion for Screening of Plaintiff's Proposed Second Amended Complaint Pursuant to 28  
16 U.S.C. § 1915A(a) and the Prison Litigation Reform Act 42 U.S.C. § 1997e (ECF No. 74) is  
17 DENIED.

18 IT IS FURTHER ORDERED that Michael Rodriguez's Motion Requesting Court Order  
19 Directing the Las Vegas Metropolitan Police Department and Naphcare to Facilitate the U.S.  
20 Marshal's Service of Process (ECF No. 70) is GRANTED in part and DENIED in part as stated  
21 in this order.

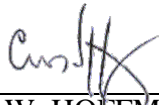
22 IT IS FURTHER ORDERED that the clerk of court must detach and separately file  
23 Rodriguez's second amended complaint (ECF No. 46-1).

24 IT IS FURTHER ORDERED that the clerk of court must send to Rodriguez seven blank  
25 summons forms and seven blank USM-285 forms for the newly-added defendants, along with a  
26 copy of this order.

27 IT IS FURTHER ORDERED that Rodriguez must complete the forms and file them with  
28 the court by January 2, 2019.

1 IT IS FURTHER ORDERED that upon receipt of the proposed summonses and  
2 completed USM-285 forms from Rodriguez, the clerk of court must issue the summonses and  
3 deliver the summonses, the USM-285 forms, a copy of the second amended complaint (ECF No.  
4 46-1), and a copy of this order to the U.S. Marshal for service.

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6 DATED: December 6, 2018

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9 C.W. HOREMAN, JR.  
10 UNITED STATES MAGISTRATE JUDGE  
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